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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 MICHEL LABADIE,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA, et. al.,

14 Defendant.

CASE NO. C09-1276 MJP

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS FTCA CLAIMS

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16 This comes before the Court on Defendants' motion to dismiss claims against the
17 individual officers. (Dkt. No. 78.) Having reviewed the motion and the Plaintiff's untimely
18 response, the Court GRANTS Defendants' motion to dismiss.

19 **Background**

20 Plaintiff Michel Labadie ("Labadie") is a Canadian citizen currently residing in British
21 Colombia. (Compl. ¶ 7.) Defendants Edward Escobar, Isidoro Longoria, Eoin Martinez, David
22 Decker, Jesse Cobb, Becky Elston, Jason Honti, Jeff Sterrit, and Eric Lehmann, (together
23 "Individual Defendants") are either Custom and Border Patrol Officers or Immigration and
24 Customs Enforcement Special Agents. (Id. ¶ 9-10). The United States is also named as a

1 defendant. (Id. ¶ 8.) Labadie alleges that on September 9, 2006, Officer Escobar held his neck
2 and punched him in the face. (Id. ¶ 15.) Labadie alleges causes of action for illegal search and
3 seizure, invasion of privacy, assault, defamation, and false light. (Id. ¶¶ 21-41.)

4 **Discussion**

5 Defendants seek to dismiss Plaintiff's Federal Tort Claims Act ("FTCA") claims against
6 the individual officers in their official capacity. In response, Plaintiff states Defendants' motion
7 is moot because his amended complaint does not allege a FTCA claim against the individual
8 officers. Specifically, Plaintiff states his complaint is against the individual officers in their
9 individual capacities under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). Since
10 Labadie concedes individual officers are immune from a FTCA claim in their official capacity
11 and Defendants are not seeking to dismiss Labadie's Bivens claims, the Court GRANTS
12 Plaintiff's motion to dismiss official capacity claims against the individual officers under the
13 FTCA.

14 The Court observes Plaintiff's response to Defendants' motion to dismiss was due June 6,
15 2011 under Local Rule 7(d). Plaintiff filed his motion three days late on June 9, 2011. Since
16 Plaintiff concedes dismissal of FTCA claims against the individual officers, the effect of this
17 delay is minimal. However, Plaintiff is advised that the Court will disregard future motions,
18 responses, or replies, not filed in a timely manner according to the Court's Local Rules.

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1 **Conclusion**

2 The Court GRANTS Defendants' motion to dismiss FTCA claims against the individual
3 officers in their individual capacity. The clerk is ordered to provide copies of this order to all
4 counsel.

5 Dated this 14th day of June, 2011.

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8 Marsha J. Pechman
9 United States District Judge
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